No. 05-502

In the Supreme Court of the United States

October Term, 2005

BRIGHAM CITY,

***Petitioner*,**

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR

***Respondents*.**

ON WRIT OF CERTIORARI TO THE
UTAH SUPREME COURT

**BRIEF
AMICI CURIAE
of
AMERICANS FOR
EFFECTIVE LAW ENFORCEMENT, INC.,
THE INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE and THE
NATIONAL SHERIFFS' ASSOCIATION
IN SUPPORT OF PETITIONER.**

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

BRIEF OF *AMICI CURIAE* 1

INTEREST OF *AMICI CURIAE* 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 4

ARGUMENT

THE FOURTH AMENDMENT DOES NOT PROHIBIT LAW ENFORCEMENT OFFICERS, ACTING IN AN OBJECTIVELY REASONABLE MANNER AND IN GOOD FAITH, WHO PERSONALLY WITNESS AN ONGOING PHYSICAL ALTERCATION IN A RESIDENCE, FROM ENTERING THE RESIDENCE TO PREVENT BODILY HARM; THE AMENDMENT DOES NOT REQUIRE OFFICERS TO WAIT PASSIVELY FOR VIOLENCE TO ESCALATE TO A POINT AT WHICH SEVERE HARM IS LIKELY TO OCCUR . . . 6

CONCLUSION 14

TABLE OF AUTHORITIES

Cases **Page**

Brigham City v. Stuart, et al., 2005 UT 13, 122 P.3d 506, (2005) 4

Brigham City v. Stuart, et al., 2002 UT App. 317, 57 P.3d 1111 (2004) 4

Horton v. California, 496 U.S. 128 (1990) 13

Mincey v. Arizona, 437 U.S. 385 (1978) 4, 6-7

Richards v. Wisconsin, 520 U.S. 385 (1997) 4

United States v. Borchardt, 809 F.2d 1115 (5th Cir. 1987) . . 9

United States v. Cervantes, 219 F.3d 882 (9th Cir. 2000) . . . 9

United States v. Leon, 468 U.S. 897 (1984) 13

United States v. McClain, 430 F.3d 299 (6th Cir. 2005) 8

United States v. Thomas, 430 F.3d 274 (6th Cir. 2005) 9

Whren v. United States, 517 U.S. 806 (1996) 9, 12

Constitution

U.S. Const. Amend. IV . . . . . *passim*

Statutes

42 U.S.C. § 1983 14

Treatises and Articles

3 Wayne R. LaFave, Search and Seizure § 6.6(a) (4th ed. 2004) 10

Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects Under Medical Emergency Exception to Warrant Requirement*, 11 A.L.R. 5th 52, § 2[a] (1993) . 7

Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT JOURNAL OF CRIMINAL LAW 1 (Dec. 2005) http://www.boalt.org/bjcl/v10/v10bell.htm 8, 12, 13

BRIEF OF *AMICI CURIAE*

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondents. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc., (**AELE**), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc. made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world. Founded in 1893, the IACP, with more than 20,000 members in 101 countries, is the world's oldest and largest association of police executives. IACP's mission, throughout the history of the association, has been to identify, address and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of protecting citizens from violence, including the important category of domestic violence; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of training and policies on the subject.

Because of the relationship with our members and the composition of our membership and directors, including active law enforcement administrators and counsel, we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

At 3:00 A.M. a police department received a complaint of a loud party at a residence. Four officers responded and stood on the street curb in front of the house. They could hear a loud commotion from within the house, yelling, shouts of "stop, stop" and "get off me." To any objectively reasonable person it appeared that a fight was in progress, possible domestic violence.

The officers saw a beer bottle on the ledge of the front window. One officer stood guard at the front door and three others walked to the corner of the house and down the driveway to the backyard fence to investigate where the fight was coming from. Looking into the backyard through the fence, they saw two teenage males drinking alcoholic beverages. They continued to hear the loud noise of a fight and approached the back of the house to investigate.

Through a window, the officers could see four adults attempting to restrain a juvenile against a refrigerator. The juvenile's hands were doubled into fists and he was attempting to free himself from the adults. The officers then walked to the open back door. The screen door was shut, but an officer could see the juvenile punch one of the adults in the face, drawing blood. As the fighting continued, an officer opened the screen door and yelled "police," but the noise of the fighting was so great he was not heard. The officers then entered the kitchen and an officer again yelled as loudly as he could. With that the altercation stopped. In order to prevent anyone else from being injured, the officers stepped between the combatants and handcuffed the juvenile. The adult assault victim was offered assistance but the situation turned into a further melee and the adult occupants were then arrested for disorderly conduct, intoxication, and contributing to the delinquency of a minor.

The trial court suppressed the evidence of alcohol consumption found inside the home, finding no exigent circumstances to justify the police entry into the residence. The court said the officers should have knocked on the door, even though it noted the occupants probably would not have heard a knock. This was affirmed 2-1 by the Utah Court of Appeals, *Brigham City v. Stuart, et al.*, 2002 UT App. 317, 57 P.3d 1111 (2004), with a dissenter noting that it was "nonsensical" to require officers, charged with keeping the peace, to witness this degree of violence and take no action until it escalated further. The Utah Supreme Court affirmed, 3-2, *Brigham City v. Stuart, et al.*, 2005 UT 13, 122 P.3d 506 (2005), holding that the officers' entry was not justified under either the "emergency aid" exception recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978), or the "exigent circumstances" exception to the warrant requirement.

The two dissenters in the Utah Supreme Court argued that the majority decision would consign law enforcement to the porch steps until it is too late to prevent the very injury the majority conceded officers are entitled to prevent. They cited the trial court's finding that a knock probably would not have been heard and, relying upon the decision in *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997), concluded that it is not unreasonable for officers to bypass knocking or announcing their presence if such an action would be futile, dangerous, or inhibit an effective investigation of the suspected crime. The dissenters noted that the Fourth Amendment does not require "paralysis" when the police are eyewitnesses to on ongoing assault in situations where immediate intervention is necessary to prevent physical harm.

SUMMARY OF ARGUMENT

Law enforcement officers deal on a daily basis with a wide range of incidents of physical assaults. Much of this daily routine of law enforcement in America involves intervention in

domestic violence. The proper test for such cases should be good faith conduct of the officers based upon facts giving rise to an objectively reasonable belief that exigent circumstances exist to prevent injury in domestic violence and other assaultive conduct scenarios.

This Court has long espoused the standard in Fourth Amendment settings as reasonably objective circumstances justifying police investigative activities. Speaking from our unique experience in the criminal justice system, *amici* submit that the decision of the court immediately below presents an array of confusing rules which provide law enforcement officers with little or no guidance to act in domestic violence and related assaultive combat cases. The case further highlights the conflicting rules and opinions in the state and federal courts which result in law enforcement legal advisors in different states formulating different rules and policies for officers in their jurisdictions. This results in a situation where, for example, a police trainer with a multi-state audience is faced with a multiplicity of different and often conflicting rules on a subject which is governed by federal constitutional law.

***Amici* request the Court to adopt a bright line rule that where law enforcement officers have an objectively reasonable basis to believe there are exigent circumstances supporting an immediate entry into a residence necessary to prevent physical harm to occupants therein, including domestic partners or others, they may do so in accordance with Fourth Amendment jurisprudence and their peace-keeping duties.**

As part of such a rule we submit that when it is apparent that an immediate physical entry into a dwelling is necessary to quell ongoing violence, it is unnecessary to require officers to spend precious time on the doorstep engaged in futile attempts to announce their presence. We join with the dissenting judges

in the courts below that the Fourth Amendment precedents of this Court do not require such "empty gestures."

ARGUMENT

THE FOURTH AMENDMENT DOES NOT PROHIBIT LAW ENFORCEMENT OFFICERS, ACTING IN AN OBJECTIVELY REASONABLE MANNER AND IN GOOD FAITH, WHO PERSONALLY WITNESS AN ONGOING PHYSICAL ALTERCATION IN A RESIDENCE, FROM ENTERING THE RESIDENCE TO PREVENT BODILY HARM; THE AMENDMENT DOES NOT REQUIRE OFFICERS TO WAIT PASSIVELY FOR VIOLENCE TO ESCALATE TO A POINT AT WHICH SEVERE HARM IS LIKELY TO OCCUR.

Amici will not repeat the legal arguments put forward by the petitioner in this case; we do, however, support them.

As national representatives of law enforcement officers, administrators and legal advisors, we wish to inform the Court of the following policy considerations from our professional perspective:

- Nationally, law enforcement agencies have been presented by the courts with an array of at least three different legal theories from which to choose when faced with a factual scenario such as the present case: **The Emergency Aid Doctrine**; **The Exigent Circumstances Doctrine**; and **The Community Caretaking Doctrine**.

- Under the **Emergency Aid Doctrine** (also known as the "**Emergency Aid Exception**"), "[n]umerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Mincey v. Arizona*, 437

U.S. 385, 392 (1978). While this was dictum in the Court's opinion, the Court stated that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (quoting *Wayne v. United States*, 318 U.S. 205, 212 (D.C. Cir. 1963)). See, generally, cases collected at Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects under Medical Emergency Exception to Warrant Requirement*, 11 A.L.R. 5th 52, § 2[a] (1993).

From a policy point of view, a problem for police administrators, trainers, and personnel in the field is that *Mincey* did not articulate a standard by which "emergency aid' entries would be judged. Thus, while many state and federal courts have cited *Mincey* as recognizing an "emergency aid exception" to the warrant requirement, the state and federal courts that have adopted this doctrine are inconsistent in their approaches to it and many, often conflicting, nuances that have been accreted to the rules through application.

- Under the **Exigent Circumstances Doctrine**, a warrantless entry into a home is permissible if an objectively reasonable police officer would believe that a person is in need of immediate aid. One recent commentator has described this doctrine thusly:

  > Exigent circumstances have been described as "those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." [*United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.)]. When both probable cause and exigent

> circumstances exist, the exigent circumstances exception justifies warrantless searches. As the probable cause requirement demonstrates, however, exigent circumstances analysis is appropriate only when officers act in a criminal investigatory capacity. [*People v. Ray*, 981 P.2d 928, 936-37 (Cal. 1999)].

Bell, Fourth Amendment Reasonableness: *Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT JOURNAL OF CRIMINAL LAW 1, 4 (Dec. 2005).
http://www.boalt.org/bjcl/v10/v10bell.htm

A recent case also describes the doctrine as,

> In general, exigent circumstances exist when "real immediate and serious consequences" would certainly occur if a police officer were to "postpone [ ] action to get a warrant." *Welsh v. Wisconsin*, 466 U.S. 740, 751, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984) (internal quotation omitted). "The exigent circumstances exception relies on the premise that the existence of an emergency situation, demanding urgent police action, may excuse the failure to procure a search warrant." *United States v. Radka*, 904 F.2d 357, 361 (6th Cir. 1990). We have identified the emergency situations giving rise to the exigent circumstances exception to the warrant requirement as . . . [*inter alia*] a risk of danger to the police or others. *United States v. Williams*, 354 F.3d 497, 503 (6th Cir. 2003) (citing *United States v. Johnson*, 22 F.3d 674, 680 (6th Cir. 1994)). . . .

United States v. McClain, 430 F.3d 299, 304 (6th Cir. 2005).

Some courts examining emergency entries under the exigent circumstances doctrine apply the *objective standard* traditionally used in Fourth Amendment cases. As pointed

out in *United States v. Thomas*, 430 F.3d 274, 280 (6th Cir. 2005), a recent case applying the "knock and announce" rule,

> [B]y now it is well established that the state of mind of arresting police officers does not establish whether a seizure in general or a constructive entry in particular has occurred. *See Mendenhall*, 446 U.S. at 554 n. 6, 100 S.Ct. 1870 ("[T]he subjective intention of [law enforcement] to detain . . . is irrelevant except insofar as that may have been conveyed to the respondent."); *United States v. Waldon*, 206 F.3d 597, 603 (6th Cir. 2000) ("Whether an encounter between a police officer and a citizen is consensual depends on the officer's objective behavior, not on any subjective suspicion of criminal activity."); *see generally Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.").

Other courts apply the doctrine with the focus on an officer's *subjective motivation* for making an entry. This line of cases holds that even if an intrusion is objectively reasonable, the doctrine does not apply if the officer was not subjectively motivated by the need to render aid. See, e.g., *United States v. Cervantes*, 219 F.3d 882, 890 (9th Cir. 2000); *United States v. Borchardt*, 809 F.2d 1115, 1117 (5th Cir. 1987).

The problem for police administrators, trainers and personnel with this line of cases and interpretation is that ". . . outside the context of inventory search or administrative inspection . . . , [the United States Supreme Court has never held] that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment." *Whren v. United States*, 517 U.S. 806, 812 (1996). Also questioning the subjective

motivation line of interpretation, see 3 Wayne R. LaFave, Search and Seizure § 6.6(a) n. 17, p. 454 (4th ed. 2004).

- Under the **Community Caretaking Doctrine**, yet another legal basis for possible resolution of the Fourth Amendment issues involving factual scenarios similar to the instant case exists:

> More recently, courts have begun to recognize the community caretaking exception to the warrant requirement, which is distinct from the exigent circumstances exception. In the 1999 case [of] *People v. Ray*, [981 P.2d 928, 934 (Cal. 1999)] the California Supreme Court recognized the duties of peace officers to perform community caretaking functions unrelated to crimefighting: "[O]ur contemporary society . . . is an impersonal one. Many of us do not know the names of our next-door neighbors. Because of this, tasks that neighbors, friends or relatives may have performed in the past now fall to the police." The court acknowledged that one legitimate role of police officers is to respond to requests of people who seek police assistance because they are concerned about the safety or welfare of their friends, loved ones, and others and that "circumstances short of a perceived emergency may justify a warrantless entry." [981 P.2d at 934]. Approving a police entry made with intent to safeguard property and to search for citizens in distress, the *Ray* court concluded that "[w]hen officers act in their properly circumscribed caretaking capacity, we will not penalize the People by suppressing evidence of crime they discover in the process." [981 P.2d at 939] . . . [T]he United States Supreme Court has acknowledged legitimate community caretaking functions in the context of vehicle seizures and searches, but the Court has yet to decide directly whether the community

caretaking exception extends to warrantless searches of homes. [*Cady v. Dombrowski*, 413 U.S. 433 (1973)]. . . .

Courts consider the level of intrusion itself when determining whether police action was reasonable. This basic reasonableness standard governs warrantless entries made for community caretaking purposes, including intent to render emergency aid. Probable cause and exigent circumstances analysis is not implicated when officers are not motivated by crime-solving intentions. Thus, officer intent at the time of entry is a significant consideration when determining whether the community caretaking exception applies, and courts require officers to act in good faith, meaning that the officer's entry cannot be a pretext for the investigation of criminal activity. Moreover, the officer's actions must be objectively reasonable, meaning that he must have a reasonable belief, based on articulable facts, that a person is in need of immediate assistance or protection from harm.

The good faith requirement also limits the scope of searches made pursuant to the community caretaking exception: "[E]ntry must be limited to the justification therefor, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance." [*People v. Davis*, 497 N.W.2d 910, 921 (Mich. 1993)]. The warrantless entry and subsequent search "must be suitably circumscribed to serve the exigency which prompted it." Nevertheless, "once the veil of the home has been legally pierced, [there is] no need for police officers to turn a blind eye to crime [plain view doctrine], so long as the arrest is otherwise

> effected in compliance with the constitutional requirement of probable cause (and any other relevant state law criteria." [*Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1245 (7th Cir. 1994)].
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> Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT JOURNAL OF CRIMINAL LAW 1, 4-8 (Dec. 2005). http://www.boalt.org/bjcl/v10/v10bell.htm

- Compounding the problem for law enforcement administrators, trainers and personnel is the fact that these three legal doctrines developed by the courts are closely related, share some common elements—but diverge on other elements—and state and federal courts have not always clearly distinguished between them. Even the labelling process varies among the courts, making it difficult for law enforcement officers to know which one of the doctrines applies in their jurisdiction and what the elements are.

- Based on these considerations *amici* submit that this case is an opportunity for the Court to clarify the law on the subject and adopt a bright-line rule for law enforcement to apply. We believe that in light of the Court's Fourth Amendment precedents—with *Whren v. United States*, 517 U.S. 806 (1996) as the cornerstone—objective reasonableness should be the basis for judging law enforcement conduct in these cases without regard to the subjective beliefs of a particular law enforcement officer (with the exception of inventory and administrative searches), and that the following rule or some variation thereof should be applied:
    - **Where a law enforcement officer has an objectively reasonable basis to believe that exigent circumstances exist that injury will occur unless the officer makes a warrantless entry upon private property and/or a**

dwelling to prevent the same, the officer, acting in good faith,[2] may take appropriate action to prevent injury. *Amici* believe, based on our experience, that such a rule should apply to any level of injury, since altercations— including domestic violence (which includes familial parties and cohabitants)—can readily escalate into felonious conduct if an officer hesitates to take preventive action. Indeed, police officers have a civil law duty to protect in such cases. When so acting, an officer would have a constitutionally protected status and evidence of any crime would be plain view evidence under the rule of *Horton v. California*, 496 U.S. 128 (1990) and subject to seizure.

- However this Court chooses to formulate the rule for assessing actions similar to those engaged in by the officers in this case, *amici* submit that the officers acted in an objectively reasonable manner and were entirely warranted under the Fourth Amendment in making the entry as they did to prevent injury to the juvenile and others. Indeed, if

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[2] *United States v. Leon*, 468 U.S. 897 (1984). In the context of the Community Caretaking Doctrine one commentator has argued:

> The better result would be to recognize that good faith warrantless searches, when appropriately limited in scope and conducted in order to provide protection or assistance to citizens in distress, do not offend Fourth Amendment guarantees. Rather, they are reasonable intrusions occurring in the performance of legitimate police community caretaking functions—functions that our society and our courts have come to expect law enforcement officers to perform.

Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT JOURNAL OF CRIMINAL LAW 1, 27 (Dec. 2005). http://www.boalt.org/bjcl/v10/v10bell.htm

the officers had not acted as they did, they would have violated their oath of office to protect life and could be potentially subject to disciplinary action by law enforcement administrators as well as civil liability under 42 U.S.C. § 1983 and state tort provisions for failure to protect.

CONCLUSION

Amici urge this Court to uphold the constitutionality of the law enforcement conduct involved in this case on the law and as a matter of sound judicial policy.

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